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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ROOSEVELT REED,

10 Petitioner,

11 v.

12 RON HAYNES,

13 Respondent.

Case No. C17-1859-RAJ-JPD

ORDER DENYING SECOND MOTION
FOR APPOINTMENT OF COUNSEL
AND GRANTING EXTENSION OF TIME
TO FILE A RESPONSE

14 This is a federal habeas action filed pursuant to 28 U.S.C. § 2254. This matter comes
15 before the Court at the present time on petitioner's second motion for appointment of counsel
16 and on his motion for an extension of time to file a response to respondent's answer to
17 petitioner's federal habeas petition. The Court, having reviewed petitioner's motions, and the
18 balance of the record, hereby finds and ORDERS as follows:

19 (1) Petitioner's second motion for appointment of counsel (Dkt. 19) is DENIED. As
20 petitioner was previously advised, there is no right to have counsel appointed in cases brought
21 under 28 U.S.C. § 2254 unless an evidentiary hearing is required. *See Terravona v. Kincheloe*,
22 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1992); and,

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1 Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts.

2 However, the Court may exercise its discretion to appoint counsel for a financially eligible
3 individual where the "interests of justice so require." 18 U.S.C. § 3006A.

4 A review of the materials before the Court at this time, including petitioner's petition and
5 respondent's answer thereto, suggests that an evidentiary hearing will not be necessary to resolve
6 petitioner's claims. In addition, petitioner fails once again to demonstrate that the interests of
7 justice are best served by appointment of counsel. Petitioner asserts that he requires an attorney
8 and an investigator to interview a witness at Harborview Medical Center whom his trial attorney
9 should have called as a witness on petitioner's behalf at trial. Petitioner maintains that the
10 information gleaned from such an interview would help him prove his ineffective assistance of
11 counsel claim(s).

12 The Court first notes that the two ineffective assistance of counsel claims presented in
13 petitioner's federal habeas petition relate to the manner in which petitioner's trial counsel
14 handled jury instruction issues. It is unclear how a witness interview would assist petitioner in
15 pursuing either of those claims. Moreover, this Court's review of petitioner's federal habeas
16 petition "is limited to the record that was before the state court that adjudicated the claim on the
17 merits." *Cullen v. Pinholster*, 563 U.S. 170, 181-82 (2011). Thus, even if petitioner were able to
18 obtain additional evidentiary support for his federal habeas claims at this point, such evidence
19 would be outside the scope of this Court's review. In sum, petitioner has not persuaded this
20 Court that appointment of counsel is warranted at this time. Counsel will be appointed, as
21 required, should the Court later determine that an evidentiary hearing is necessary.

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(2) Petitioner's unopposed motion for a 60-day extension of time to file a response to respondent's answer (Dkt. 18) is GRANTED. Petitioner's response was originally due not later than March 12, 2018. Petitioner is granted an extension of time until **May 14, 2018** to file any response to respondent's answer. Respondent's answer (Dkt. 15) is RE-NOTED on the Court's calendar for consideration on **May 18, 2018**.

(3) The Clerk shall direct copies of this Order to petitioner, to counsel for respondent, and to the Honorable Richard A. Jones.

DATED this 22nd day of March, 2018.

James P. Donohue
JAMES P. DONOHUE
United States Magistrate Judge